

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SPARTECH POLYCOM, INC.,

Petitioner-Appellee,

v

CITY OF ST. CLAIR,

Respondent-Appellant.

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UNPUBLISHED

March 8, 2011

No. 295334

Tax Tribunal

LC No. 00-329583

Before: FITZGERALD, P.J., and O'CONNELL and METER, JJ.

PER CURIAM.

Respondent City of St. Clair (“the city”) appeals as of right from a decision of the Michigan Tax Tribunal holding that petitioner’s personal property be valued at the amounts proposed by petitioner’s expert witness. The city argues on appeal that the expert’s methodology was flawed and violated statutory restrictions. We affirm.

Petitioner manufactures plastic pellets that are sold to other manufacturers, often in the auto industry. Following an audit by Tax Management Associates, the State Tax Commission (STC) made a determination of valuation of petitioner’s personal property for the tax years 2003, 2004, and 2005 that was adopted by the city. The STC retroactively increased the assessed and taxable values against petitioner for tax years 2003, 2004, and 2005. Petitioner timely appealed the STC order to the tax tribunal, along with valuations for tax years 2007 and 2008, but not 2006.

Petitioner supported its claims of lower true cash value by the testimony of personal property appraiser J. Michael Clarkson. Clarkson testified that in valuing petitioner’s personal property he first inspected the plant inside and out, listing each piece of property and the date petitioner acquired the property. Clarkson appraised all but a few pieces of equipment using a market comparison approach, which compares the appraised property to the prices paid for similar items in the current market. Clarkson testified that he relies heavily on the internet to find these prices. Clarkson generally relies on large websites like eBay or a conglomeration of market sellers. When using eBay, Clarkson looks at the “Buy It Now” price, rather than the auction price. Clarkson explained that the Buy It Now price is the price for which the seller would be willing to immediately part with the product. Clarkson acknowledged that he did not know if there were enforcement mechanisms attached to a Buy It Now price. At the close of the

trial, the tribunal concluded that petitioner's valuations based on the eBay Buy It Now prices were sufficiently reliable.

The city argues on appeal that the method used by Clarkson does not meet the requirements of MCL 211.27 in determining true cash value. The city also argues that Clarkson did not demonstrate that he could verify a single sale that occurred through the use of eBay and that he failed to consider the impact of freight, taxes, and installation on the value of the property. Finally, the city argues that the tribunal failed to note that STC multiplier tables are to be used unless there is overwhelming evidence of a different market value.

The standard of review for Tax Tribunal cases is multifaceted. Where fraud is not claimed, this Court reviews the tribunal's decision for misapplication of the law or adoption of a wrong principle. We deem the tribunal's factual findings conclusive if they are supported by "competent, material, and substantial evidence on the whole record." But when statutory interpretation is involved, this Court reviews the tribunal's decision de novo. [*Wexford Med Group v City of Cadillac*, 474 Mich 192, 201; 713 NW2d 734 (2006) (citations omitted).]

"Substantial evidence is the amount of evidence that a reasonable person would accept as being sufficient to support a conclusion; it may be substantially less than a preponderance of the evidence." *Wayne Co v Mich State Tax Comm*, 261 Mich App 174, 186-187; 682 NW2d 100 (2004).

This case revolves around the determination of the true cash value of petitioner's personal property, which is defined in the general property tax act, MCL 211.1 *et seq.* as follows:

As used in this act, "true cash value" means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. The usual selling price may include sales at public auction held by a nongovernmental agency or person if those sales have become a common method of acquisition in the jurisdiction for the class of property being valued. The usual selling price does not include sales at public auction if the sale is part of a liquidation of the seller's assets in a bankruptcy proceeding or if the seller is unable to use common marketing technique to obtain the usual selling price for the property. . . . [MCL 211.27(1).]

True cash value is synonymous with "fair market value." *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 484 n 17; 473 NW2d 636 (1991). The burden of establishing the true cash value is on the petitioner. MCL 205.737(3).

The three most common approaches to valuation are the capitalization of income approach, the market approach, and the cost-less-depreciation approach.<sup>1</sup> *Antisdale v City of Galesburg*, 420 Mich 265, 276; 362 NW2d 632 (1984). “It is the duty of the tax tribunal to select the approach which provides the most accurate valuation under the circumstances of the individual case.” *Id.* at 277. Variations on these approaches are acceptable if accurate and reasonably related to the fair market value of the property. *Meadowlanes*, 437 Mich at 485. The tribunal is not bound to accept either party’s theory of valuation, and has a duty to make an independent determination of true cash value. *Great Lakes Div of Nat’l Steel Corp v City of Ecorse*, 227 Mich App 379, 389-390; 576 NW2d 667 (1998).

The city contends that Clarkson’s use of eBay runs afoul of statutory restrictions against using auction prices to determine an item’s market value. Under MCL 211.27, auction prices may only be used to determine the true cash value if auction sales “have become a “common method of acquisition” for that type of property in Michigan. The city asserts that there is no evidence that petitioner or any other company ever bought any machinery through eBay.

It is undisputed that Clarkson relied on the Buy It Now prices listed for the items, which he identified as the price for which the seller would be willing to immediately part with the item. The Buy It Now price is a fixed price set by the seller, not a price offered by prospective buyers participating in an auction.<sup>2</sup> As for the city’s assertion that a valuation based on the market approach must be supported by evidence of verified sales, respondent fails to identify any statute, case law, or administrative rule or regulation that requires such a showing. See *Nat’l Waterworks, Inc v Int’l Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007). In fact, *Antisdale* suggests that offers for sale are sufficient. *Antisdale*, 420 Mich at 277 n 1 (“The market value of a given property is estimated by comparison with similar properties which have recently been sold or offered for sale in the open market.”) (citation and internal quotation marks omitted). Further, Clarkson’s report included actual listings for each item that he appraised.

The city also asserts that petitioner’s valuation fails to account for freight, installation, and taxes associated with any sale. In *Lionel Trains, Inc v Chesterfield Twp*, 224 Mich App 350, 354-355; 568 NW2d 685 (1997), this Court concluded that installation, freight, and sales tax are appropriately included in true cash value unless there is evidence that such costs are not part of the market. In this case, the tribunal specifically found adequate evidence that freight,

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<sup>1</sup> The STC multiplier tables are a form of the cost-less-depreciation approach.

<sup>2</sup> We note that one Buy It Now option available on eBay.com “[c]reate[s] a fixed price listing, with no bidding allowed.” The other “[c]reate[s] an auction-style listing,” and “buyers can choose whether to buy [the] item right away or compete in the auction.” The second “Buy It Now price is available until someone bids on the item or the reserve price is met.” Although the second option is an “auction-style listing,” it still sets a fixed price above the reserve price that the seller has indicated will result in an immediate sale.

installation, and taxes were not included in the market prices of the goods at issue, and under those conditions *Lionel Trains* did not foreclose the tribunal from excluding the additional charges. There is substantial evidence supporting this conclusion. *Wexford*, 474 Mich at 201.

Lastly, the city claims that the tribunal failed to follow authority requiring it to use the STC's multiplier tables unless faced with overwhelming evidence of a different market value. The city cites several tribunal cases standing for this proposition; however, none of these cases are binding on this Court. *Catalina Marketing Sales Corp v Dep't of Treasury*, 470 Mich 13, 23; 678 NW2d 619 (2004). Moreover, the cases conflict with decisions published by our Supreme Court. In *Antisdale*, which predates any of the cases cited by the city, the Supreme Court required the tribunal to choose the valuation approach "which provides the most accurate valuation under the circumstances of the individual case." *Antisdale*, 420 Mich at 277. This rule was echoed by the Court in *Meadowlanes*, 437 Mich at 485. In neither case did the Court suggest that the STC multiplier tables enjoy any type of presumptive favor, let alone that another approach can only supplant the tables if supported by overwhelming evidence.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Peter D. O'Connell  
/s/ Patrick M. Meter